IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/09/2002

CORAM

THE HONOURABLE MR. B. SUBHASHAN REDDY, CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE D. MURUGESAN

W.A.No.1752 of 2002 and W.A.No. 1883 of 2002
and W.A. NO. 1884 of 2002,

W.P.Nos.11143 to 11150, 11173 to 11176 of 2002,
10263, 24529, 31280 of 2002
And
W.A.M.P.Nos.3475, 3477, 3034, 3222, 3223 of 2002,
W.P.M.P.Nos.15095 to 15098, 33740, 33741,
13885, 15059 to 15066, 45667 of 2002

W.A.No.1752 of 2002

N. Muthukrishnan,
S/o. Nagappan,
27, Sankarapandiapuram Street,
Rajapalayam. ..... Appellant

-Vs-

1. D. Pushpam,
W/o. G. Dhanaraj,
12, Bharathi Nagar,
Rajapalayam.

2. The Regional Transport Officer-
Cum- Secretary to the Regional
Transport Authority,
Virudhunagar. ..... Respondents

Writ Appeals under Section 15 of the Letters Patent and Writ Petitions under Section 226 of the Constitution of India, praying for issuance of Writ of Mandamus and Certiorarified Mandamus, as stated therein.

For Appellants :Mr. AR.L.Sundaresan in
W.A.Nos.1752, 1883, 1884 of 2002 and for
Petitioners in W.P.Nos.24529 and 31280 of 2002

For Respondent 1 :Mrs. Radha Gopalan
W.A.Nos.1752, 1883 and 1884 of 2002
and for petitioners in W.P.Nos.10 263,

11143 to 11146, 11173 to 11176 of 2002

Mr. N. Gopalakrishnan: For Respondents 9, 12
and 17 in W.P.No.24259, 31280 of 2002

Mr. R. Natesan : For Respondents 10,
13,14, 15 and 16 in W.P.No.24259, 31280 of 2002.

Mr. V. Raghupathy
Government Pleader
Assisted by :For Government in all W.As
Mr.Sanjay Ramaswamy and W.Ps
Government Advocate
And Mr.P.Chandrasekaran
Government Advocate

:J U D G M E N T

D. MURUGESAN, J.

When the miscellaneous petitions in the writ appeals were listed for hearing, at the request of the learned counsel appearing for all the parties, both the writ appeals and the connected writ petitions were taken up for final hearing. Since the issues raised are identical, both the writ appeals and the writ petitions are disposed of by this common order.

2. Sometime during the year 1997, the Government considered the introduction of five seater autos by permitting private individuals to operate, as the same could meet the needs of the traveling public to a large extent. Hence, initially, the Government in G.O.Ms.No.1058 Home Department dated 17.07.1997 permitted the registration of VIKRAM five seater autos developed by scooters India limited as a passenger carrier (Public Service Vehicle). Thereafter, the Government in G.O.Ms.No.1492 Home Department Dated 30.10.1998 permitted the registration of 100 five seater autos in Chennai City on an experimental basis. The fare structure of Re.1/- per head per K.M., was also notified by the Government in G.O.Ms.No.1493 Home Department dated 30.10.1998. The proposal submitted by the Transport Commissioner in his letter dated 14.10.2000 to permit five seater autos in other parts of the State was examined by the State Government. Accordingly, G.O.Ms.No.277 Home (Transport Department VI) dated 22.03.2001 was issued, permitting five seater autos not exceeding 50 in number in each district headquarters of the State. By a subsequent order in G.O.Ms.No.278 Home (Transport VI) Department dated 22.03.2001, the Government also permitted five seater vehicles developed by Bajaj India Limited to be registered as autos to be permitted to ply in Chennai city and other places in the State on the same pattern permitted in G.O.Ms.No.277 Home Department dated 22.03.2001. These orders were issued in exercise of powers under Section 67 of the Motor Vehicles Act, 1988.

3. In pursuance of the said orders, the Transport Commissioner, State of Tamil Nadu by letter dated 18.05.2001 issued certain instructions to all the Transport Officers in Tamil Nadu. For better appreciation of the

Government Orders and the instructions of the Transport Commissioner, the same are extracted as under:-
"Government of Tamil Nadu
ABSTRACT
Motor Vehicles - Autorickshaws - 3 wheeler with vehicles -
Issue of Autorickshaw permits to run in the districts and Chennai city -
orders - issued.

HOME (TRANSPORT - VI) DEPARTMENT
G.O.Ms.No.277 Dated : 22.03.2001

1. G.O.Ms.No.1492 Home Dated 30.10.1998.
2. G.O.Ms.No.1493 Home Dated 30.10.1998.
Read also:
3. From the Transport Commissioner, Chennai,
Letter No.H3/99743/2000, dated 14.10.2000.
- - - - -
O R D E R :-
In the G.O., first read above, the Government permitted the plying of 100 five seater autos (VIKRAM) in Chennai City manufactured by Scooters India Limited, a Government of India Enterprise. The Transport Commissioner, Chennai in his letter third read above has recommended that 50 more permits for five seater autos may be given to each Regional Transport Officer, in Chennai and 50 each for district headquarters considering the public need. The Commissioner of Police has also agreed to the proposal of the Transport Commissioner.

2. The Government have examined the proposal of Transport Commissioner. They consider that as far as Chennai city is concerned, it would be sufficient if another 100 five seater autos are permitted instead of permitting 50 additional autos for each Regional Transport Office in Chennai City. However, in respect of district headquarters, 50 five seater autos can be permitted as recommended by Transport Commissioner. Accordingly, the Government direct that 100 additional auto permits for five seater autos in Chennai city and 50 each other Regional Transport Offices in district headquarters be allowed. The Transport Commissioner is requested to take suitable action accordingly.

(BY ORDER OF THE GOVERNOR)
- - - - - -
ABSTRACT

Motor Vehicles - Issue of Auto Rickshaw permits to Tempo Minider vehicles (5+1 seats) manufactured by Trl.Bajaj Tempo Limited Chennai - Orders issued.
Home (Transport IV) Department
G.O.Ms.No.278 Dated : 22.03.2001
Read :
1. G.O.Ms.No.1492 Home Dated 30.10.1998
2. From the Transport Commissioner, Chennai
Lr.No.85302/H3/2000 dated 22.02.2001

3. G.O.Ms.No.277 Home Dated 22.03.2001
- - - - -
ORDER :
The Transport Commissioner, Chennai has reported that permission was granted by him for Registration of Minider Autorickshaw with a seating capacity of 5+1 for private use under Light Motor Vehicles Category in his office circular No.47/98 dated 05.05.1998. He has also stated that Trl.Bajaj Tempo Limited has reported the traveling public prefer Bajaj Tempo Minider Vehicle as these vehicle gives better riding comfort with adequate space for luggage. The Transport Commissioner has further stated that he has already addressed the Government to relax ceiling on Five seats New Auto rickshaw permits in Chennai city and permission for introducing the same in other places in Tamil Nadu and therefore requested the Government to consider the request of Tvl.Bajaj Tempo limited favourably for issue of Auto permit to their vehicle Tempo Minider (5+1 seater) in Chennai city and other places in Tamil Nadu. The Government in their order read third above, allowed additional permits to Chennai City and new permits for district head quarters as recommended by Transport Commissioner.

2. The Government after careful consideration accept the recommendation of the Transport Commissioner, Chennai and direct that the vehicle Tempo Minider (5+1) manufactured by Tvl.Bajaj Tempo limited Chennai permitted to ply as an Auto (5 seats) in Chennai City and other places in Tamil Nadu on the same pattern as Vikram (5 Seats) auto permitted in the Government Order first read above.
(BY ORDER OF THE GOVERNOR)
- - - - - -
TRANSPORT DEPARTMENT
From:
Thiru. M.B.Pranesh I.A.S.,
Special Commissioner, Transport Officers
Transport Commissioner in Tamil Nadu
Chepauk, Chennai - 5.
Letter No.99245/G3/98 dated 18.05.2001
Sir,

Sub:- Motor Vehicles - Auto Rickshaws 3 wheeler Five seater vehicles - Issue of Auto Rickshaw permits in the districts and Chennai City - Orders issued - Certain clarification requested - Regarding.
Ref:-
1. G.O.Ms.No.277, 278 Home (Tr.VI) Dept., dated 22.03.2001 and 1492, 1493 dated 30.10.1998 in this office letter of even No. dated 11.04.2 001.
2. Letter No.0807/B2/2001 dated 09.04.2001 from the RTO Coimbatore (North)
3. Letter No.9237/A2/2001 dated 02.04.2001 from the RTO Kancheepuram
4. Letter No.0166/2001 dated 20.04.2001 from RTO Erode.
5. Letter dated 30.04.2001 from Tvl.Bajaj Temple Ltd., Warron Road, Chennai - 4.
6. Letter dated 29.03.2001 from Scooters India Ltd., 19, Dr. Lakshamanaswamy Salai, K.K.Nagar West, Chennai - 78.
- - - -
I invite your personal attention to the Government Orders communicated in this

office letter first cited and request you to adhere to the instructions of Government Orders and also the following conditions while granting the permits for five seater auto rickshaws.

1. The above permits shall be issued to the persons who are in Chennai City and District Headquarters (subject to the ceiling prescribed in G.O.Ms.No.277 and 278 dated 22.03.2001)
2. The inner height of the vehicle shall not be less than 1219 mm.
3. All the seats shall face forward and who distance between two seats (back to back) shall not be less than 860 mm.
4. The vehicle shall be provided with hard to roofing.
5. The vehicles may be permitted to ply within a radius of 30 KM from the place where the vehicle is normally kept for use (as specified by the applicant in the application.)
6. Fare shall be collected at the rate of Re.1 per K.M as ordered in G.O.Ms.No.1493 dated 30.10.1998.
7. Tax shall be collected at the rate prescribed in Schedule 1 No.5A(b)(ii) of Tamil Nadu Motor Vehicles Taxation Act 1974 i.e., at the rate of Rs.700/- per annum and Rs.3500/- for five years.
The Regional Transport Officers are requested to send acknowledgement to the respective zonal officers and the Zonal officers may send their acknowledgements to this office."

4. Based upon the Government Orders and the instructions of the Transport Commissioner, the petitioners in W.P.Nos.10263, 11143 to 11150, 11173 to 11176 of 2002 applied on different dates to the Secretary to the Regional Transport Authority, Virudhunagar for the grant of Minider auto rickshaw permits under Sections 66, 69, 73 and 80 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") read with Rule 170 of the Tamil Nadu Motor Vehicles Rules 1989 (hereinafter referred to as "the Rules") so as enable them to ply their vehicles within 30 K.M., radius in and around Rajapalayam Bus stand. The petitioners were issued with orders of grant dated 21/22.01.2002. The petitioners were directed to produce the minider autorickshaw with valid registration certificate, insurance certificate and tax receipt paid within three months from the date of receipt of a copy of the order. There is no dispute that the petitioners complied with those directions. On such compliance, the petitioners were normally entitled for the grant of permit. However, they were served with further proceedings of the Secretary to Regional Transport Authority dated 05.03.2002 , amending the area of operation viz., instead of 30 K.M., radius from Rajapalayam Town Bus stand to one of 30 K.M., radius from Virudhunagar Central Bus Stand, Virudhunagar. The said amendment was obviously made as the Government Orders empower the Regional Transport Authorities to grant auto rickshaw permits only within the headquarters of the Districts and Rajapalayam was not the headquarters of Virudhunagar District and Virudhunagar only being the headquarters of the said district.

5. Hence, the petitioners filed writ petitions challenging the order of the Secretary to the Regional Transport Authority dated 05.03.2 002. While admitting the writ petitions, the learned Single Judge granted interim stay of the operation of the impugned order. In view of the grant of stay, the

petitioners in the above writ petitions once again approached the Secretary to the Regional Transport Authority for the grant of permit. However, the same was not accepted and specific directions from the Court were insisted upon for grant of permits. Hence, some of the petitioners filed W.P.Nos.13925 to 13931 of 2002 for directions to the Transport Authorities to issue permits. By a common order dated 24.04.2002, the learned single Judge directed the Secretary to the Regional Transport Authority, Virudhunagar to make an endorsement in the permit as to the vehicle number and grant permits to the petitioners

within a period one week from the date of receipt of the copy of the order. In pursuance of the directions, permits were also granted to the petitioners and they also commenced the operations.

6. Aggrieved by the said direction, some of the operators of Mini bus within Rajapalayam town filed W.A.Nos.1752, 1883 and 1884 of 2002, after obtaining leave from this Court as they were not parties in the writ petitions. By order dated 13.06.2002, this Court stayed the directions granted by the learned single Judge. Though interim stay was granted in respect of the directions given in W.P.Nos.13925 to 13931 of 2002, the Secretary to Regional Transport Authority, Virudhunagar by his proceedings dated 02.07.2002 directed all other operators also not to ply the vehicles for which permits were granted for the places except the headquarters viz., Virudhunagar. Hence, the petitioners filed petitions to vacate the interim stay granted by this Court on 13.06.2002.

7. The appellant in W.A.No.1752 of 2002 also filed W.P.No.24529 of 2 002, by impleading as many as 20 permit holders, challenging G.O.Ms. No.277, 278 Home (Transport VI) Department dated 22.03.2001 and for a consequential direction to the respondents to cancel the permits issued to 20 permit holders to ply the five seater autorickshaws in Rajapalayam, Srivilliputhur and Sivakasi.

8. One P.Malar, a permit holder of three seater autorickshaw also filed W.P.No.31280 of 2002, seeking for writ of mandamus, directing the transport authorities to cancel the permits to respondents 4 to 24 viz., the permit holders. Since these two writ petitions also related to the same issue, they were also taken up for hearing and disposal along with the other writ petitions and writ appeals.

9. Mrs.Radha Gopalan, learned counsel appearing for Respondent 1 in W.A.Nos.1752, 1883 and 1884 of 2002 and for petitioners in W.P.Nos.10 263, 11143 to 11146, 11173 to 11176 of 2002 submitted that the appellants in W.A.Nos.1752, 1883 and 1884 of 2002 and the petitioners in W.P.Nos.24529 and 31280 of 2002 are not the persons aggrieved and they do not have locus to challenge the permits granted in favour of the petitioners. In support of the said submissions, learned counsel relied upon the judgments of the Apex Court reported in MITHILESH GARG ETC., ..VS.. UNION OF INDIA AND OTHERS (A.I.R. 1992 S.C. 443) and ABDUL HAI KHAN ..VS.. SUBAL CHANDRA CHOSE AND OTHERS (2002(4) S.C.C. 519). Secondly, learned counsel submitted that applications were made under Sections 67, 73 and 80 of "the Act" and under Rule 170 of "the Rules". Under the provisions the grant of permits are not restricted and

application for the grant of permit to ply five seater autos were considered and issued in the light of the applications within 30 K.M., radius from Rajapalayam Central Bus stand. The said grant cannot be modified covering places other than requested in the application and that too without any prior notice.

10. Mr.R.Natesan, learned counsel appearing for the respondents 10, 13,14, 15 and 16 in W.P.No.24259 and 31280 of 2002 has submitted that the reference to the Government Orders alone will not invalidate the grant as the authority is otherwise empowered to grant. He also submitted that as against the grant, effective remedy of appeal is available to the aggrieved persons. He further submitted that the challenge to the impugned orders dated 05.03.2002 could be made at first only by way of revision.

11. Mr.N.Gopalakrishnan, learned counsel appearing for respondents 9, 12 and 17 in W.P.No.24259 and 31280 of 2002 has submitted that the writ petitions are not maintainable inasmuch as the petitioners had not challenged the directions issued by this Court in implementing the grants in some of the writ petitions.

12. Mr.AR.L.Sundaresan, learned counsel appearing for appellants in W.A.Nos.1752, 1883, 1884 of 2002 and for Petitioners in W.P.Nos.24529 and 31280 of 2002 has submitted that in G.O.Ms.No.277 Home (Transport VI) Department dated 22.03.2001, the transport authorities are empowered to issue grant to ply five seater vehicles in the district headquarters only. However, by the grants, the respondents 4 to 24 have been permitted to operate the vehicles outside the district headquarters. Hence, those grants are liable to be set aside.

13. Mr.V.Raghupathy, learned Government Pleader has submitted that the Government is empowered to issue directions to the Transport Authorities for grant under Section 67 of "the Act". The grants issued in favour of the applicants to ply their vehicles outside the headquarters are also sustainable when the areas are covered by within 30 K.M. radius from the headquarters. Learned Government Pleader further submitted that when the transport authorities by mistake issued grants to ply the vehicles in the places outside the district headquarters as directed by the Government, they are entitled to rectify the mistake by amending the area of operation in conformity with the directions of the Court.

14. In view of the above rival submissions, the following points arise for our consideration:
(1) Whether the appellants in W.A.Nos.1752, 1883 and 1884 of 2002 and the petitioners in W.P.Nos.24529 and 31280 of 2002 are persons aggrieved and could maintain the writ appeals and the writ petitions ?
(2) Whether the transport authorities are empowered to issue grant to ply the five seater autos other than the places directed in G.O.Ms. Nos.277 Home (Transport VI) Department dated 22.03.2001 ?
(3) If so, whether such grants could be sustained under other provisions of "the Act" and "the Rules" ?

15. Insofar as the first submission as to the sustainability of the writ

petition, the Apex Court in MITHILESH GARG ETC., ..VS.. UNION OF INDIA AND OTHERS (A.I.R. 1992 S.C. 443) while considering the guaranteed right of every citizen to take up or carry on the mode of transport business has held that existing operators cannot challenge the liberalized policy of the Government in grant of permits under the new enactment. To hold so, the Apex Court took note of the fact that restricted licence under the hands of few persons giving rise to monopoly would adversely affect the public interest. The said judgment came up for consideration before a Division Bench of this Court in an unreported judgment in TVL. PATTUKKOTTAI AZHAGIRI TRANSPORT CORPORATION LTD., REP. BY ITS MANAGING DIRECTOR ..VS.. THE REGIONAL TRANSPORT AUTHORITY (W.A.No.978 of 1993 dated 04.10.1993). The Division Bench has held as follows:

"On examination of the provisions contained in the Motor Vehicles Act, it is not possible to hold that a stage carriage permit granted to an operator cannot at all be challenged by another operator. Even the Supreme Courtin MITHILESH GARG'S CASE (A.I.R. 1992 S.C. 443) has pointed out several aspects of the matter:-

"The petitioners have further contended that the conditions of roads, social status of the applicants, possibility of small operators being eliminated by big operators, conditions of hilly routes, fuel availability and pollution control are some of the important factors which the Regional Transport Authority is bound to take into consideration while taking a decision on an application for grant of permit. These are the matters which are supposed to be within the comprehension of the transport authorities. The legislative policy under the Act cannot be challenged on these grounds. It is not disputed that the Regional Transport Authority has the power under the Act to refuse an application for grant of permit by giving reasons. It is for the authority to take into consideration all the relevant factors at the time of quasi-judicial consideration of the application for grant of permits. The statutory authorities under the Act are bound to keep a watch on the erroneous and illegal exercise of power in granting permits under the liberalised policy".

There may be a case granting a stage carriage permit contrary to the terms of a scheme of total exclusion of private operators. Similarly, there may be an illegal exercise of power in granting permits under the liberalised policy. Therefore, it is not possible to hold that under any circumstances, the stage carriage permit granted to an applicant cannot at all be challenged and the jurisdiction under Article 226 or 227 of the Constitution cannot be exercised against the decision of the Regional Transport Authority granting a stage carriage permit, at the instance of a third party. It is relevant to notice that safety of the public is one of the primary objects of the Motor Vehicles Act. Suppose, on a particular route, several permits are granted, making it impossible to operate the vehicles on that route, the public safety will be in danger. Therefore, it cannot be said that under any circumstances, the grant of stage carriage permit cannot be challenged and the jurisdiction under Article 226 cannot be exercised. It is one thing to say that the writ petition is not maintainable and it is quite another thing to say as to whether in a given case, jurisdiction under Article 226 should or should not be exercised. When we say that the petition is not maintainable, we do not examine the case on merits and dismiss the writ petition on the threshold - in limine. In the latter case, in examining the petition, we may come to the

conclusion that the exercise of jurisdiction itself is not warranted. Thus, in the first case, the case is dismissed at the threshold and in the second case, it is dismissed on considering its merits. Therefore, we are of the view that it cannot be laid down as a rule of law that a petition under Article 226 challenging the grant of a stage carriage permit, cannot at all be maintained."

16. In ABDUL HAI KHAN ..VS.. SUBAL CHANDRA CHOSE AND OTHERS (2 002(4) S.C.C. 519), the Apex Court has held that the existing operators having permits claiming monopoly over any route cannot question the modification by seeking writ of mandamus against the transport authority preventing it from granting permits to other private operators on that route or a route overlapping a portion of the route. In that case, the Apex Court was considering a scheme framed by the State of West Bengal nationalizing certain routes in the Calcutta and Howrah region under Section 68 of the Motor Vehicles Act, 1939. The scheme also provided the existing operators to continue their service on the route specified in the permits. When new permits were granted to private operators, existing operators challenged the same. The Apex Court has held as under:-

"From the contentions raised by the learned counsel for the parties it is clear to us that there is no dispute about the position of law that the notified Scheme, whether totally excluding private operators or partially excluding them is binding on all concerned so long as it remains in force. At the same time, it is also clear that the Scheme as framed in 1963 does not totally exclude private operators. Indeed it permits operation of stage carriage service by private operators. Therefore, the Scheme is only a partial exclusion scheme. In such a case, it is not open to a private operator who is himself operating on a nationalized route on account of modification of the Scheme to seek a writ of mandamus to the Authority not to grant permit to any other private operator on that route or a route overlapping a portion of the route. To put it differently, he is not entitled to enjoy a monopoly of operation of the route. It is up to the Authority to consider whether the application filed by a private operator for permit on that route or another route overlapping that route should be issued or not. In case the private operator who is operating on the nationalized route has a grievance that the number of private operators specified in the notified Scheme is being exceeded then the permit issued to the operator / operators in excess of the specified limit, may be challenged before the statutory fora in accordance with the provisions of the Act.

From the reading of the above findings of the Apex Court and the Division Bench, it is clear that there is no absolute bar for an existing operator to maintain a writ petition under Article 226 of the Constitution of India in challenging the grant on the ground of either the violation of the provisions of the Act or Rules or when the very grant themselves are contrary to the directions issued by the Government.

17. Coming to the facts of the present cases, the appellants in all the three writ appeals and the petitioners in W.P.Nos.24529 and 31280 of 2002 have challenged the grants not only on the ground that they are existing operators in Rajapalayam but also on the ground that the grants were given

contrary to the Government Orders. When the violation of the Government Orders is pleaded, this Court is not prevented from entertaining the writ petitions to test the validity of the grants at the instance of the existing operators more particularly when the grants issued are not in conformity with or outside the ambit of Government Orders as they cannot have force in the eye of law. Hence, we answer the first issue in the affirmativ e and hold that the appellants in W.A.Nos.1752, 1883 and 1884 of 2002 and the petitioners in W.P.Nos.24529 and 31280 of 2002 are entitled to maintain the writ appeals and the writ petitions in challenging the grants on the ground that the grants were issued contrary to the directions contained in the Government Orders.

18. Coming to the validity of the grant, the Government had taken a policy decision in the interest of traveling public to introduce five seater autos as an experimental basis in the city of Chennai even in the year 1998. The fare structure of Re.1/- per head per K.M., was also notified by the Government on 30.10.1998. On the proposal of the Transport Commissioner for extending facilities of five seater autos to the traveling public in the district headquarters also, the Government issued G.O.Ms.No.277 Home (Transport VI) Dated 22.03.2001. A reading of the said order would indicate that such permits for five seater autos could be allowed by the concerned regional transport authorities in the district headquarters only. The contention of the learned Government Pleader that the grant can cover a radius of 30 K.M., if any town falls within radius of 30 K.M., from the district headquarters cannot be accepted as the order of the Government is very clear in directing the grant only in the district headquarters.

19. Though the petitioner in W.P.No.24529 of 2002 has challenged both G.O.Ms.Nos.277 and 278 dated 22.03.2001, in effect in the affidavit no challenge has been made to these Government Orders insofar as they direct the issue of grants to ply five seater autos. What is complained in the affidavit is that the grant was not in conformity with the Government Orders. There is no dispute as to the source of power to Government to issue the above orders traceable to Section 67 of " the Act". It is also not in dispute that directions so issued are binding on the transport officers. As per the directions of the Government, the Regional Transport Authority is empowered to issue grant for five seater autos only in the district headquarters. Equally, it is not disputed that Rajapalayam is not the district headquarter of Virudhunagar District. Though applications were filed for the grant of permits in the prescribed form under the provisions of "the Act", a reading of the application, a copy of which has been filed in the typed set of papers, shows that the applications have been filed only in terms of the Government Orders. In column IV of the application, the area / route is mentioned as "within 30 K.M.radius from Rajapalayam and Srivilliputhur and Sivakasi bus stand". Equally, the proceedings of the Secretary to the Regional Transport Authority in issuing grants refers to the Government Orders made in G.O.Ms.No.277 Home (Transport IV) Department dated 22.03.2001. The subsequent proceedings dated 0 5.03.2002, modifying the area of operation which have been impugned by the grantees in W.P.Nos.10263, 11143 to 11150, 11173 to 11176 of 20 02 also refer to G.O.Ms.No.277, 278 Home (Transport VI) Department dated 22.03.2001. It is apparent from the above that the applications for the grant were considered only with reference to the

Government Orders and not under Sections 66 or under sections 69, 73 and 80 of " the Act" and Rule 170 of "the Rules". The submission of Mrs. Radha Gopalan in this regard is therefore liable to be rejected. When the Government orders specifically empowers the Secretary to the Regional Transport Authority for issue of grant only within the District headquarters, issue of grants to enable the applicants to operate outside the district head quarters are totally outside the purview of the Government Orders. For the said reason, the grants issued enabling the applicants to operate outside the area of district headquarters cannot be sustained. However, the existing operators of the mini bus and autorickshaws have filed the writ petitions on the ground that they are holders of permits to ply the vehicles within Rajapalayam town. These writ petitions have not been filed on the ground of public interest. Hence, in our considered view, the existing operators are entitled to sustain the writ petitions only as against the grants issued in favour of respondents 4,5 and 6 to ply five seater auto rickshaws within 30 K.M., radius in and around Rajapalayam bus stand. To that extent, they are entitled to succeed in W.P.Nos. 24529 and 31280 of 2002 . For the same reason, we do not find any merit in challenge to the grants in respect of respondents 7 to 24. Hence, issue Nos. 2 and 3 are answered to the extent indicated above.

20. The petitioners in W.P.Nos.24529 and 31280 of 2002 have questioned the Government orders as to the fixation of fare for each stage and allowing the five seater auto rickshaws to pick up passengers at every stage. In our considered view, the said submission is totally misconceived. The Government orders are very clear inasmuch as they empowered the Transport Authorities to grant permits to ply five seater auto rickshaws within 30 K.M. radius from the bus stand of headquarters of each districts. Even with regard to the fare structure, the Government had already notified the same in G.O.Ms.No.1493 Home Department dated 30.10.1998 when they permitted the registration of 100 five seater autos in Chennai city on experimental basis. The same fare structure is followed as per the Government orders. The said Government Orders in regard to the fare structure are within the ambit of the provisions of Section 67 of "the Act". Moreover, what is contemplated is collection of Re.1/- as fare per K.M., and not the fare for each and every stage as contended by the learned counsel. Accordingly, the fare structure of Re.1/- per K.M., cannot be considered in any way either outside the purview of Section 67 of "the Act" or arbitrary. Hence, we do not find any merit in challenge to the Government Orders in this regard. Coming to G.O.Ms.No.278 Home (Transport VI) Department dated 22.03.2001, it only refers to the permission to ply Tempo Minider (5+1) manufactured by Tvl.Bajaj Tempo Ltd.,Chennai to ply as an Auto in Chennai City and other places in Tamil Nadu on the same pattern as VIKRAM five seater autos. No arguments were advanced by the learned counsel appearing for the existing operators, questioning the said Government Order. That apart, we do find that the said Government Order is in accordance with the powers conferred on the State Government under Section 67 of "the Act".

21. In view of our findings that the Original grants in favour of respondents 4,5 and 6 themselves are outside the ambit of the Government Orders, the subsequent orders dated 05.03.2002, modifying the conditions of area of operation can have no force. Hence, the challenge to the impugned

orders dated 05.03.2002 in W.P.Nos.10263, 11143 to 11 150, 11173 to 11176 of 2002 does not require any consideration on merits.

22. For the foregoing conclusions, W.A.Nos.1752, 1883 and 1884 of 20 02 are allowed and the orders in W.P.Nos.13925 and 13930 of 2002 are set aside. W.P.Nos.24529 and 31280 of 2002 are allowed to the extent indicated above. Consequently, W.P.Nos.10263, 11143 to 11150, 11173 to 11176 of 2002 are dismissed as no orders are required. No costs. Consequently, the connected W.A.M.Ps and W.P.M.Ps are closed.

(B.S.R.,CJ) (D.M.,J)

Index: Yes
Internet: Yes
Dpn/-

Judgment in
W.A.Nos.1752,1883 & 1884 of 2002,
W.P.Nos.11143 to 11150, 11173 to 11176 of
2002, 10263, 24529, 31280 of 2002

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